

United States District Court
Southern District of Texas
FILED

TDH

JUL 22 2005

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

United States District Court
Southern District of Texas
ENTERED

JUL 26 2005

Michael N. Milby, Clerk
Laredo Division

DAGOBERTO MALDONADO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

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Civil No. L - 05 - 112

Criminal No. L-02-600-01


OPINION AND ORDER

Pending before the Court is Petitioner Maldonado's Unopposed Motion requesting Habeas Corpus to be Heard by Original Trial Judge. Although the rules governing 2255 motions preference the trial or sentencing judge as the final arbiter, both the Supreme Court and the Fifth Circuit have held that these motions must be filed with the sentencing court. *See Swain v. Pressley*, 430 U.S. 372 (1977); *United States v. Flores*, 616 F.2d 840, 842 (5th Cir. 1980). Where the judge who presided over the trial or sentencing is unavailable to consider the motion, the motion should be presented to another judge in that division, in accordance with the local rules of procedure for assignment of cases. *See Rules Governing Section 2255 Proceeding for the United States District Court*, Rule 4(a). In this case, the trial judge, the Honorable Keith Ellison, has left the division and Petitioner's case has been re-assigned.

This Court is as interested in judicial economy as the Petitioner, but judicial economy in this instance dictates that this case remain in the sentencing court, the Laredo Division, where the files and institutional memory remain. Petitioner's motion is hereby DENIED.

IT IS SO ORDERED.

Done this 22 day of July, 2005, in Laredo, Texas.



MICAELA ALVAREZ
UNITED STATES DISTRICT JUDGE

7/25/05 m